

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. P-750
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued February 26, 2004)

On September 11, 2003, MidAmerican Energy Company (MidAmerican) filed a petition and exhibits for renewal of natural gas pipeline permit number P-887, issued to Iowa-Illinois Gas and Electric Company, predecessor to MidAmerican, on October 17, 1978, for the Blue Grass Lateral #2. The original permit was for a line approximately 2.08 miles long. On March 11, 1981, the Iowa State Commerce Commission, predecessor agency to the Utilities Board (Board), issued an amendment to the permit to add approximately 1.68 miles to the line. The renewal petition is for approximately 3.83 miles of existing 4-inch diameter steel pipeline for the transportation of natural gas in Scott County, Iowa. The pipeline begins at the point of interconnection with an existing MidAmerican pipeline in Section 11, Township 77 N, Range 2 E, Scott County, and runs in a generally northerly and westerly direction to an existing MidAmerican pipeline in Section 33, Township 78 N, Range 2 E, Scott County.

On February 23, 2004, the Board assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing. The Board directed MidAmerican to make the code reference correction to petition Exhibit C as indicated in the Board staff report filed February 13, 2004.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC Chapter 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

MidAmerican must submit prepared testimony and exhibits prior to the hearing. At a minimum, MidAmerican's prepared testimony must address the issues listed above. In addition, MidAmerican must file amended petition Exhibit C that corrects the reference to 49 C.F.R. § 192.111(c) as discussed by Mr. John Bloome in his February 13, 2004, memo attached to this order. MidAmerican must explain why the current application is for an approximately 3.83-mile pipeline when prior permits were for lengths of 2.08 and 1.68 miles of pipeline.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than MidAmerican who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

MidAmerican and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the

letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Utilities Board Records Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case, except that three copies must be sent to the Consumer Advocate. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a

contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine 199 IAC Chapter 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There is a link to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. John A. Bloome, utility regulatory inspector for the Board's Safety & Engineering Section, has prepared a memo dated February 13, 2004, concerning MidAmerican's petition pursuant to Iowa Code § 479.11. A copy of this memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memo and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the memo must file such objection as soon as possible, and no later than five days prior to the

hearing. The parties will have the opportunity to contest any information contained in the memo in prefiled testimony and at the hearing.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to MidAmerican's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service.

3. The following procedural schedule is established:

a. On or before March 11, 2004, MidAmerican must file prepared direct testimony relating to its petition for renewal. MidAmerican must correct petition Exhibit C and explain the current length of the pipeline as discussed in this order.

b. On or before March 25, 2004, the Consumer Advocate and any objector may file prepared responsive testimony.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Tuesday, April 13, 2004, in Board

Conference Room 3, 350 Maple Street, Des Moines, Iowa. The hearing will be by telephone conference call unless any objections are filed, or unless any party files an objection to a telephonic hearing at least five days prior to the hearing. Parties and persons who wish to be connected to the hearing must dial 1-866-708-4636 to reach the bridge line. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

d. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".

4. The undersigned administrative law judge proposes to take official notice of Mr. Bloome's memo dated February 13, 2004, and attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine Mr. Bloome concerning the statements in the memo should file a notice of intent to cross-examine no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon MidAmerican and the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 26th day of February, 2004.

TO: The File DATE: February 13, 2004

FROM: John A. Bloome File: P-750

SUBJECT: Petition for Renewal of Pipeline Permit for an Existing MidAmerican Energy Pipeline in Scott County – Blue Grass Lateral # 2

The pipeline begins at the point of interconnect with an existing MidAmerican pipeline at a point near the East right-of-way line of 100th Avenue and the Northwest corner of the SW ¼ of Section 11, Township 77 N, Range 2 E of the 5th P.M., Scott County. Thence northerly, in the public right-of-way along and parallel with the East right-of-way of 100th Avenue to the north right-of-way of 130 Street, a distance of approximately 2,710 feet. Thence westerly, in the public right-of-way along and parallel with the north right-of-way of 130th Street to the east right-of-way of Coon Hunters Road, a distance of approximately 8,896 feet. Thence northerly, in the public right-of-way along and parallel with the East right-of-way of Coon Hunters Road, a distance of approximately 5,250 feet in the W ½ of Section 4, said Township and Range, to a point on the south right-of-way line of U.S. Highway 61 in the NW ¼ of said Section 4.

Thence continuing northerly across U.S. Highway 61 a distance of approximately 230 feet in the SW ¼ of Section 33, Township 78 North, Range 2 East of the 5th P.M., Scott County, Iowa. Thence westerly, on private property, a distance of approximately 730 feet in the SW ¼ of said Section 33. Thence northerly, on private property, a distance of approximately 2,430 feet to an existing MidAmerican pipeline in the south right-of-way of Telegraph Road for a total distance of approximately 3.83 miles.

The route consists mostly of the pipeline lying in the bottom of the bar ditch along public right-of-way with some residential properties along the route. The portion of the pipeline that was installed in private property was tillable farmland. This pipeline is considered to be in a Class 2¹ location.

PETITION

In comparing the route inspection to the map filed as Exhibit B, staff noted no discrepancies. Staffs review of the petition and exhibits did reveal a discrepancy in Exhibit “C-3”. In Exhibit, “C-3” DETERMINATION OF MAXIMUM ALLOWABLE OPERATING PRESSURE, MidAmerican referenced §192.111(b) for determining Max Design Pressure. The reference should have been §192.111(c). This reference needs to be corrected before the permit renewal hearing. By letter dated October 6, 2003, MidAmerican was notified of the discrepancy.

PIPELINE INSPECTION

The pipeline must meet the requirements of 199 IAC Chapter 10 and 49 CFR Part 192 “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards”. The federal standards have been adopted by the Board in 199 IAC 10.12(1).

An inspection of the pipeline to determine compliance with 49 CFR Part 192 and 199 and IAC Chapter 10 was conducted on September 24 through 26, 2003. *See* Compliance Report dated September 30, 2003. One probable violation of the safety standards was found during the inspection. 49 CFR Part 192.707(a), “Line Markers: Buried Pipelines” requires pipeline markers be placed at each crossing of a public road and railroad and wherever necessary to identify the location of the transmission line to reduce the possibility of damage.

During the field inspection of the transmission line, Board staff noted a lack of pipeline markers along the north right-of-way of 130th Street between 100th Ave. and Coon Hunters Road. MidAmerican was notified of the probable violation by letter dated October 6, 2003. MidAmerican responded to the probable violation by letter dated October 24, 2003.

¹ Class locations are a population density index from 49 CFR Part 192 Section 5. Class 2 indicates there is some development near the route.

In the letter the operator stated that additional pipeline markers were installed on the pipeline on October 14, 2003. Board staff finds MidAmerican's response acceptable and considers this probable violation corrected.

A review of the gas leak history was also conducted during this inspection. There have been no leaks or repairs on this pipeline since the line was installed. However, 1,000 feet of pipeline was replaced and relocated due to the widening and reconstruction of Highway # 61 in 1993. Records show the new section of pipeline was constructed and tested in accordance with the operator's construction standards.

Inspection found no evidence of operational problems with this pipeline which would prevent it from continuing in operation as at present.

CONCLUSION

The pipeline appears in good condition and capable of continuing in operation as before. No special conditions or restrictions pertaining to safety or operation are suggested for the renewal permit.

The filing is essentially in order and appears ready to set for hearing. However, during the review of Exhibit C a deficiency was found under Part 4. *See* comments under Exhibit C. MidAmerican was notified of the deficiency and that it should be corrected prior to the permit renewal hearing. To date, MidAmerican has not filed an amended Exhibit C.